

SUBCOMMITTEE NO. 2

Agenda

S. Joseph Simitian, Chair
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Hearing Outcomes

(see Subcommittee actions under individual issues)

Thursday, April 22, 2010

Upon Adjournment of Environmental Quality Committee
Rose Ann Vuich Hearing Room (2040)

Consultant: Bryan Ehlers

<u>Item</u>	<u>Department</u>	<u>Page</u>
Vote-Only Items		
3125	California Tahoe Conservancy	2
3560	State Lands Commission.....	2
3640	Wildlife Conservation Board	2
3680	Department of Boating and Waterways	3
3720	California Coastal Commission	4
3820	San Francisco Bay Development and Protection Commission.....	4
Discussion Items		
Various	Funding and Implementing the 2009 Water Package (Including requests from: Department of Water Resources; Delta Stewardship Council; Sacramento-San Joaquin Delta Conservancy; and Delta Protection Commission)	5
	Review of the Bond Context	19
3860	Department of Water Resources	21
Various	Various Bond Funding Requests (Including requests from: California Tahoe Conservancy; Wildlife Conservation Board; State Coastal Conservancy; Santa Monica Mountains Conservancy; San Joaquin River Conservancy; Baldwin Hills Conservancy; Coachella Valley Mountains Conservancy; and Sierra Nevada Conservancy).....	39
3480	Department of Conservation.....	44
Various	Legal Services Fund Swap Proposal (Including: California Coastal Commission; State Lands Commission; and San Francisco Bay Development and Protection Commission).....	47
Appendix A – LAO's CALFED Recommendation		50

Resources—Environmental Protection—Energy—Transportation

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Departments Proposed for Discussion

Funding and Implementing the 2009 Water Package

In late 2009, the Legislature and the Governor agreed upon an historic package of water-related legislation that addressed a host of water issues challenging the state of California, in particular the preservation, restoration, and sustainable management of the Sacramento-San Joaquin Delta (Delta). The series of five bills passed in the Seventh Extraordinary Session of 2009, henceforth referred to collectively as “the Water Package,” are summarized in the table below, developed by the LAO.

Figure 4

The Major Components of the 2009 Water Package

Bill	Topic	Key Provisions
SBX7 1 (Chapter 5, Simitian and Steinberg)	Delta Governance	<ul style="list-style-type: none"> Creates Delta Stewardship Council and Delta Conservancy, and reconfigures existing Delta Protection Commission. Requires the council to create a management plan for the Delta (incorporating work from existing planning efforts)—the Delta Plan. Requires development of water flow criteria for Delta ecosystem.
SBX7 2 (Chapter 3, Cogdill)	Water Bond	<ul style="list-style-type: none"> Places an \$11.1 billion legislative bond on the November 2010 ballot, providing for multiple water program goals. Reactivates California Water Commission (with continuous appropriation authority for new storage projects).
SBX7 6 (Chapter 1, Steinberg and Pavley)	Groundwater	<ul style="list-style-type: none"> Requires groundwater elevation monitoring by local agencies (with guidance from Department of Water Resources). Bars counties and certain local agencies that do not comply with reporting from receiving state water grants and loans.
SBX7 7 (Chapter 4, Steinberg)	Water Conservation	<ul style="list-style-type: none"> Requires a 20 percent reduction in urban per capita water use (and 5 percent overall base reduction—regardless of population) by 2020. Requires agricultural water efficiency, and changes certain water recycling and stormwater targets.
SBX7 8 (Chapter 2, Steinberg)	Water Diversion/Rights	<ul style="list-style-type: none"> Requires increased reporting of water use and water diversion; increases certain penalties for water rights violations.

As discussed previously at a joint Senate-Assembly, policy-budget committee oversight hearing on March 9, the Governor’s Budget contains a number of requests associated with implementation of the Water Package, with the bulk of the proposed spending aimed at assembling the new Delta Governance structure pursuant to Chapter 5 (SBx7 1, Simitian and Steinberg). As outlined in the table below, nearly half of proposed Water Package funding would go to support the new Delta Stewardship Council (Council), the new Delta Conservancy, and the Delta Protection Commission.

Governor's Budget Proposal to Implement the Water Package

State Agency/Major Activities	Proposed 2010-11 Expenditures (in millions)
Delta Stewardship Council <ul style="list-style-type: none"> Creation of the Delta Plan, establishment of the Council, continuation of Delta science programs. 	\$49.1
Department of Water Resources <ul style="list-style-type: none"> Reactivation of the California Water Commission, groundwater monitoring, water conservation projects, and the \$28 million Two-Gates Fish Protection Demonstration Project. 	35.0
Wildlife Conservation Board <ul style="list-style-type: none"> Continuous appropriation authority for Natural Communities Conservation Planning (NCCP) projects. 	24.0
State Water Resources Control Board <ul style="list-style-type: none"> Increased water rights enforcement, new water diversion reporting, Delta Watermaster Program, and water conservation activities. 	5.4
Delta Protection Commission <ul style="list-style-type: none"> Preparation of an economic sustainability plan. 	2.0
Delta Conservancy <ul style="list-style-type: none"> Establishment of the conservancy and early action projects. 	1.3
Department of Fish and Game <ul style="list-style-type: none"> Development of Delta flow criteria. 	1.0
Total	\$117.8

Of the amounts listed above, the vast majority are proposed to be supported in the Budget Year (BY) from existing bond funds (as opposed to the water bond to be sent to the ballot, Chapter 3 [SBx7 2, Cogdill], which was not designed as a funding mechanism for the Water Package).

Below are descriptions and discussions, grouped by theme, of each Water Package-related BCP. Staff notes that there is no BCP before the Legislature for the NCCP projects funding because the Wildlife Conservation Board (WCB) received an appropriation of \$24 million (Proposition 84) in Chapter 2 (SBx7 8, Steinberg). Similarly, SBx7 1 appropriated \$28 million (Proposition 84) to fund the "Two-Gates" project; however, the Governor has proposed to shift this funding to Proposition 50 (and use Proposition 84 funds for other purposes), so the Legislature has a funding decision before it on this item.

Water Package BCPs

Delta Governance. SBx7 1 established **co-equal goals** for the Delta of providing a more reliable water supply to the state, and restoring and enhancing the Delta ecosystem. The bill tasked several entities with carrying out this mission.

1. BCP: Staff Delta Stewardship Council. SBx7 1 created the Council, consisting of seven members with diverse expertise and a broad statewide perspective, and tasked it with the following:

- Develop a **Delta Plan** to guide state and local actions in the Delta in a manner that furthers the co-equal goals (noted above);
- Develop performance measures for the assessment and tracking of progress and changes to the health of the Delta ecosystem, fisheries, and water supply reliability;
- Determine if a state or local agency's project in the Delta is consistent with the Delta Plan and the co-equal goals, and act as the appellate body in the event of a claim that such a project is inconsistent with the goals;
- Determine the consistency of the Bay-Delta Conservation Plan (BDCP) with the co-equal goals; and
- Appoint the Delta Independent Science Board (as a successor to the CALFED Science Program) to provide oversight and review of the scientific research, monitoring, and assessment programs that support adaptive management of the Delta.

Governor's Budget. The Governor requests 58 positions and \$49 million (including \$5.9 GF; \$2.9 million federal funds; and the remainder from bond funds and bond-funded reimbursements) to support first-year operations of the new Council. Consistent with SBx7 1, the bulk of these resources (50 positions and \$34.3 million) are proposed to be transferred from various departments previously responsible for implementing the CALFED program (primarily the Natural Resources Agency, but also the Department of Forestry and Fire Protection, the Department of Fish and Game, and the State Water Resources Control Board). The remaining eight positions are for the Council members, including the Chair and his assistant, and would be new. The roughly \$16 million in increased funding is for development of the Delta Plan (by January 1, 2012) and would come from Proposition 84 (Prop 84) funds (\$2 million previously appropriated to the Department of Water Resources [DWR] by Chapter 1, Statutes of 2008, First Extraordinary Session [SBx2 1, Perata] and the remaining \$14 million from the DWR's Prop 84 funds—requiring a reversion and a new appropriation).

LAO Recommendation. The LAO provides the following analysis and recommendations regarding the Governor's proposals for the Council:

Evaluation of Governor's Budget Proposals for Delta Stewardship Council

In order to provide context for an evaluation of the Governor's budget proposals for the new Delta Stewardship Council (Council), we believe it is useful to first review two of the Council's core statutory responsibilities—the development of the Delta Plan and its work in connection with the Bay Delta Conservation Plan (BDCP) process. We discuss both of these responsibilities further below, and then comment on the 2010-11 budget that is proposed for the Council.

The Delta Plan. The council's main statutory assignment is the development and adoption of the Delta Plan, a planning document to guide state and local agency actions within the Delta. The plan is intended to further the state's goals of ecosystem health and water supply reliability which are to guide the state's actions in the Delta. The plan would guide the state's coordination efforts with other levels of government, and take into account other state Delta planning efforts, including the BDCP process (which we discuss in greater detail below).

The Bay Delta Conservation Plan. As part of its development of the Delta Plan, the council is required to consider the BDCP currently being developed by DWR and a group of stakeholders (including state environmental agencies, local water agencies, and environmental organizations). The council is not required to incorporate the BDCP into the Delta Plan, however, unless certain conditions are met. Specifically, the Department of Fish and Game must determine that the BDCP meets the qualifications to be deemed a natural community conservation plan. Also, the BDCP must have been approved as a habitat conservation plan that meets requirements in the federal endangered species law. The BDCP is being developed to create a long-term conservation strategy for the Delta. When complete, the plan would provide the basis for the issuance of endangered species permits necessary to allow operations of both the state and federal water projects in the Delta for the next 50 years.

This BDCP planning process is voluntary. The stakeholders and the departments participating in this planning process are not required to adopt this plan when it is completed. If the BDCP were not adopted, then the state and federal water projects would again be at risk of being held in noncompliance with endangered species laws. These agencies would therefore be required to achieve compliance with endangered species laws by the more traditional regulatory permitting process.

In order to ensure that the Delta Plan and the BDCP mesh well, the Council is expected to closely monitor and, to some degree, participate in the BDCP process. However, state law also contemplates that the Council will independently review the BDCP and make recommendations as to how it would be implemented.

The Proposed Council Budget. [Section deleted for brevity. See "Governor's Budget" section above for description of proposed funding.]

Figure 8
Positions Proposed for Delta Stewardship Council

Executive	19
Administration	14
Science	12
Planning and accountability	8
External affairs	5
Total	58

Contract Funding Proposed. The Council budget would provide funding for \$42.7 million in contracts with outside contractors and other state agencies. Of that total, \$16 million (paid for with reimbursements from DWR) would be earmarked for the development of the Delta Plan. The budget also assumes that the Council would contract for a project director (at an as-yet-undetermined amount), who would develop a process and schedule to accomplish the Delta Plan, to make presentations to the Council, and to ensure integration of the Delta Plan. Under the Governor's budget plan, this contracted project director would report to an executive-level staff member at the Council.

The Council budget would also continue an existing CALFED contract originally established under the Natural Resources Agency for a BDCP liaison at an annual cost of about \$159,000. The contractor would coordinate Delta-related activities among various state and federal agencies and the council, as well as manage public and legislative outreach activities on behalf of the Council.

Some Budget Modifications Warranted. In general, we believe the Council's budget proposal follows legislative direction regarding the transfer and use of existing resources to establish the Council. However, we recommend two modifications to the proposed budget. We find that the work that would otherwise be assigned to a project direction contractor should instead be handled by one or more of the proposed 19 executive-level staff proposed for the Council. Accordingly, we recommend reducing the Council's budget by \$200,000 (bond funds), our estimate of the approximate annual cost of such a contract.

The proposal to continue the current contract arrangement for a BDCP liaison is also problematic. The current contractor for the Council is the Metropolitan Water District (MWD) of Southern California. Contracting with such a major stakeholder of the BDCP could compromise the ability of the council to conduct its BDCP-related work objectively and without the perception that it was being unduly influenced by one party to the BDCP process. Thus, we recommend reducing the Council's budget by \$79,000 (bond funds) to eliminate the contract for the remaining six months of the contract (June through December 2010). We believe the liaison functions could likewise be handled by one of the Council's executive-level staff.

Long-Term Financing Approach Needed

How Will Implementation of the Delta Plan Be Financed? The new legislative water package requires that implementation of the Delta Plan to be developed by the Council begin by January 2012. However, the water package did not provide a long-term financing plan (the proposed water bond was not designed to fund all components of the legislative package), including for implementation of the Delta Plan. Thus, it is not clear how implementation of a new Delta Plan would be able to proceed in a timely manner as contemplated in the recent legislation.

As we have noted in the past, we believe development of a long-term plan to guide the state's investments in the Delta is warranted. In the absence of such a plan, it has been difficult for the Legislature to evaluate numerous Delta-related funding requests. The development of a long-term financing plan should await the completion of a number of Delta-related assessments. However, these assessments are now largely complete. The two-year timetable for development and implementation of a Delta Plan makes it all the more imperative that such a long-term financing plan also be developed and put in place.

We also continue to believe that such a financing plan should reflect the implementation of the "beneficiary pays" funding principle, whereby the public and private beneficiaries of a state expenditure pay an appropriate share of costs based on the benefit received. We have elaborated on the analytical arguments for this approach in past analyses of resources issues.

Council Should Develop a Long-Term Financing Plan for Delta Improvements. Based on these findings, we recommend that the Legislature adopt statutory language as a part of the budget directing the Council to develop a comprehensive long-term financing plan for state expenditures to implement the Delta Plan in conjunction with the Governor's 2011-12 budget proposal. The plan should identify a long-term funding strategy to support the ongoing operations of the Council and the Delta Conservancy. This plan should be based on the beneficiary pays principle and should clearly delineate public versus private benefits of ongoing state operations expenditures and capital projects reflected in the Delta Plan. If new fees are proposed to carry out actions recommended in the Delta Plan, the fees should be reasonable and proportionate to the benefits directly received by the fee payer. Finally, as we have often recommended in the past, bond financing should be used only for capital projects that have long-term benefits, and for reasonable administrative costs related to those capital projects.

Staff Comments. Staff shares many of the concerns of the LAO, and notes the following regarding the recommendations:

- ***Contract for Project Director for Delta Plan*** – Council staff respond to the LAO recommendation by pointing out that of the 19 positions identified as "executive staff," seven are Council members and seven are clerical/support staff, leaving only five positions to accommodate the recommendation—including the

Executive Director, Chief Counsel, Legislative Director, Chief Deputy, and the Science Deputy. According to Council staff, none of the personnel occupying these positions currently possesses the requisite background in environmental law, water project engineering, and project management and control to carry out the required workload. Furthermore, Council staff contend that the timeline specified in statute necessitates this need be met rapidly and precludes the hiring of a new permanent staff person at this time.

Staff notes that this issue highlights a broader concern for the Committee's consideration—i.e., whether the personnel currently filling the positions proposed to be transferred to the Council are still “right for the job.” The very adoption of the Water Package (including the repeal of the legislation that originally established the Bay-Delta Authority) marks a break with past Delta policy (which is viewed in many circles as failed policy), and opens a new chapter and a fresh beginning. As such, the Committee should inquire with members of the Council as to whether shuffling the same staff to a new agency and a new boss is enough to meet the high expectations of both the Legislature and the public. Furthermore, and more fundamentally, the Committee (and the Council itself) need to ask whether the individuals in those positions have the correct skill sets and the right mind set to implement the new policy embodied in the Water Package.

To the specific question of the Delta Plan Project Director, the Committee may wish to inquire as to why it is not in the long-term best interest of the Council and the state, to bring the personnel with the requisite skills into state service. Further, the Council should be asked to clarify its concerns around Delta Plan timelines that preclude hiring a permanent staff person and necessitate the proposed contract.

Finally, apropos of the issues just discussed, the LAO has recommended requiring the Administration to submit a zero-based budget proposal for Fiscal Year 2011-12 for all CALFED and Delta-related activities (see Appendix A). Staff notes that, were the current timelines not so tight (for both the development of the Delta Plan and the budget process), the ideal time to zero-base these budgets (including the Council) would be now—before implementation of new policies gets underway and before new (or, as the case may be, old) standard operating procedures and organizational culture are established. In either case, staff supports the LAO recommendation to zero-base the CALFED and Delta-related budgets, and recommends the Committee closely consider the timing issue—i.e., whether to require the zero-basing next year, or whether to demand that it be done this year.

- **Contract for BDCP Liaison** – In response to the LAO recommendation that an existing (two-year) contract with MWD for a BDCP liaison should be canceled and the workload re-assigned to executive-level staff, Council staff indicate the contract has been transferred to the DWR (although it is still funded by the

Council). Furthermore, Council staff contend that they lack the requisite expertise to meet the need filled by the current contractor.

Staff again shares many of the concerns of the LAO. Notwithstanding the contract's having been moved to the DWR, the fact that the Council proposes to continue *funding* a contract with MWD, a major stakeholder of the BDCP, could compromise the ability of the Council to conduct its BDCP-related work objectively and without the perception that it was being unduly influenced by one party to the BDCP process.

- **Long-Term Financing Plan** – Staff supports the LAO's recommendation that the Committee direct the Administration to develop and propose a long-term financing plan for Delta improvements. Generally speaking, every \$1 of bond spending costs the taxpayers (via the GF) \$2 in long-term bond debt service. For this reason, the LAO's advice, that bond financing should be used only for capital projects that have long-term benefits, and for reasonable administrative costs related to those capital projects, is quite sound. Furthermore, the "beneficiary pays" principle seems like an apt approach to fund activities in the Delta since, for example, many of the costs the state anticipates incurring there in the coming years are the result of water exports to other parts of the state, whose historic price has not included the costs of related environmental degradation. Staff notes that while this issue may be the focus of other pending legislation, the Committee may wish to provide a "back-stop" by adopting trailer bill language requiring a financing proposal in the coming fiscal year.

Staff Recommendation: HOLD OPEN.

Action: Held open. The Committee expressed intent to adopt LAO recommendation to zero-base the Council budget with the expectation that other agencies formerly participating in CALFED (e.g., DWR) would be responsible for zero-basing their own share (i.e., the undertaking would not fall solely to Council personnel). Additionally, the Committee:

1. Expressed desire for a clear line of accountability between the Council and the contractors responsible for helping develop the Plan. This could potentially be accomplished by identifying the state staff—tasked with contractor oversight—who would ultimately answer for all Plan activities. Staff will work with LAO and the Assembly to reach final recommendation.

2. Raised concern with use of BDCP liaison with connections to MWD. To the extent that most contract applicants are likely to have had a relationship with the BDCP process, the council Chair suggested that the Committee may wish to adopt language specifying that contract must be independent.

3. Agreed that a long-term financing plan for Delta activities is necessary. As discussions of a "beneficiary pays" fee continue in the policy arena, the Committee agreed with the LAO that looking at existing "CALFED" funds (via the zero-base process) is a good interim strategy.

2. BCP: Staff Delta Conservancy. SBx7 1 created the Delta Conservancy to implement ecosystem restoration activities in the Delta, and tasked it with the following:

- Adopt a strategic plan for implementation of the Delta Conservancy goals;
- Promote economic vitality in the Delta through increased tourism and the promotion of Delta legacy communities;
- Promote environmental education about, and the public use of, public lands in the Delta; and
- Assist in the preservation, conservation, and restoration of the region's agricultural, cultural, historic, and living resources.

Governor's Budget. The Governor requests seven positions and \$1.3 million (including \$829,000 GF and \$500,000 bond-funded reimbursements) to support first-year operations of the new Delta Conservancy. These resources are part of the 57 positions and associated funding currently allocated to CALFED (the balance of which are to be transferred to the Council—as noted above).

Staff Comments. According to the Administration, this proposal represents only an initial allocation of resources for the Delta Conservancy, and will be augmented in the out years by additional transfers of positions and funding from the Council as activities—particularly those surrounding the development of the Delta Plan—ramp down. Therefore, consistent with the LAO's recommendation above, the Delta Conservancy must be part of any discussion of a long-term financing plan for CALFED and Delta-related activities.

Staff Recommendation: HOLD OPEN.

Action: <i>Held open.</i>
